



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0627]

RIN 1625-AA00

Safety Zone; Atlantic Ocean, Ocean City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Atlantic Ocean adjacent to Ocean City, NJ on August 26, 2017. The safety zone will restrict vessel traffic from operating on a portion of Atlantic Ocean during a fireworks display. This safety zone is necessary to protect the public, spectators and vessels from the hazards associated with a fireworks display. The safety zone restricts vessels from transiting the zone during the effective period, unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective on August 26, 2017, from 9 p.m. to 11:59 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0627 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST2 Amanda Boone, U.S. Coast Guard, Sector Delaware Bay,

Waterways Management Division, telephone (215) 271–4814, e-mail

Amanda.N.Boone@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are impracticable, unnecessary, or contrary to the public interest. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for foregoing public comment with respect to this rule. Insufficient time remains to publish a Notice of Proposed Rule Making (NPMR) and allow for a public comment period before the event, which is scheduled to take place on August 26, 2017. The safety zone must be in effect on that date in order to serve its purpose of ensuring the safety of spectators and the general public from hazards associated with a fireworks display. Hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

For the reason discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds

that good cause exists for making this rule effective less than 30 days after publication in the FR. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels in the vicinity of the fireworks display. The event has been widely publicized in local media outlets.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Delaware Bay has determined that this temporary safety zone is necessary to provide safety during the fireworks events, and to ensure protection of the public.

IV. Discussion of the Rule

On August 26, 2017, a fireworks display event will take place on the waters of the Atlantic Ocean adjacent to Ocean City, NJ. The Coast Guard is establishing a temporary safety zone in a portion of the Atlantic Ocean adjacent to Ocean City, NJ to ensure the safety of persons, vessels and the public during the event. The proposed safety zone includes all waters of the North Atlantic Ocean within a 600 yard radius of the fireworks barge in approximate location latitude 39°16'22" N., longitude 074°33'54" W, in the vicinity of the shoreline at Ocean City, NJ.

The fireworks display is expected to occur between 9:30 p.m. and 11:30 p.m. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, this zone will be enforced from 9 p.m. to 11:59 p.m.

Access to this safety zone will be restricted during the specified date and time period. Only vessels or persons specifically authorized by the COTP Delaware Bay or designated representative may enter or remain in the regulated area.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will impact the waters affected by this rule from 9 p.m. to 11:59 p.m. on August 26, 2017, during a time of day when commercial and recreational vessels traffic is normally low. Vessels will be able to safely transit around the safety zone. Notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard

in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. It is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(g) of the Instruction, which pertains to minor regulatory changes that are editorial or procedural in nature. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

AUTHORITY: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0627 to read as follows:

§ 165.T05-0627 Safety Zone; Atlantic Ocean, Ocean City, NJ.

(a) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel and or on board another Federal, State, or local law enforcement vessel assisting the Captain of the Port, Delaware Bay with enforcement of the safety zone.

(b) Location. The following area is a safety zone: All waters of the North Atlantic Ocean within a 600 yard radius of the fireworks barge in approximate location latitude 39°16'22" N., longitude 074°33'54" W., in the vicinity of the shoreline at Ocean City, NJ.

(c) Regulations. (1) The general safety zone regulations found in § 165.23 apply to the safety zone created by this temporary section.

(2) Under the general safety zone regulations in § 165.23, persons may not enter the safety zone described in paragraph (b) of this section unless authorized by the COTP or the COTP's designated representative.

(3) To request permission to enter the safety zone, contact the COTP or the COTP's representative on marine band radio VHF-FM channel 16 (156.8 MHz). All persons and vessels in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section will be enforced August 26, 2017, from 9 p.m. to 11:59 p.m.

Dated: 21 August 2017

Scott E. Anderson,
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay
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